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DELAYED TELEGRAPH MESSAGES.

The great number of instances in which telegraph messages are delayed without one particle of excuse makes the question one of great interest. It is true that the great weight of authority is against allowing damages for the mental suffering caused by such delays, on the ground that such an element is too uncertain for proper measurement. Yet the fact that such delays do cause in many people very great agony of mind is certain at least to those who have been prevented from reaching the sick beds and death beds of those who are dear to them. Here is a great wrong permitted to go unpunished because of some judicial opinion to the effect that the element is too uncertain to permit of measurement, and yet the law gives a jury a right to measure physical pain and suffering as an element of damage. We have a rule of law which is made to prevent wrongs where one party mixes his goods wrongfully with another's in such a way as to be unable to distinguish his from the other. The law will compel the party committing the wrong to undergo the uncertainty of the confusion brought about by his misconduct even to the extent of surrendering the whole even though his may have been the most and by reason of this aiding of the remedy against the wrongdoer the law is made effective to prevent wrongs.

The great telegraph companies of the country have grown rich in the returns from the public which they serve; the service is a great and beneficial one, it is true, and deserves to be well paid, but the public has a right to demand the best service which may be rendered within reasonable limits. It is not unreasonable to demand that telegrams which announce the illness of near relatives or friends should be delivered with the greatest possible promptness and that a failure to do so should be met with a policy of the law which will tend to prevent the wrong of it. It is morally certain that in those states where the law recognizes the pain and suffering caused by such delays in question as an element of damages there are fewer delays than in those jurisdictions which do not. The law is a rule of civil conduct prescribed by the highest power of the state not only to command what is right but to prohibit what is wrong. Now it is a fair question to ask, and one worthy the serious consideration of every one, which of these jurisdictions is making it possible to best prevent a kind of a wrong which it is a burning shame to permit to go unpunished?

Why mental suffering may not be expected to follow certain wrongful acts which might give rise to them as certainly as that physical pain should follow wrongful acts which result in bodily injury, is indeed difficult to understand when we consider how many uncertain elements are permitted to enter into the policy of the law in order to prevent wrongs. When parties enter into contracts which are to run a period of years, and one of them wrongfully refuses to be further bound by its terms, the conditions existing on the day of the breach are taken into consideration in order to estimate the profits for the future, which the injured party might have made by a faithful performance of it. There might be shown to be many elements of uncertainty in the future of the contract, but the policy of the law to prevent wrongs leaves them out of consideration. It would seem in those cases which do not recognize the mental suffering which results from a wrongful delay in delivering a telegram to a mother, a husband or a father, or any one who ought to be informed and had a right to the prompt delivery, that the element of the law which is intended to prevent wrongs was left out of consideration. It would naturally occur to any one that a husband or wife or mother might be greatly shocked to know that a wife, husband or child had been very ill for a day and that a telegram should have been delivered a day sooner, but for the negligence of the agents of the company.

In the recent case of Hamrick v. Western Union Telegraph Co. (N. Car.), 52 S. E. Rep. 252, the court reiterated the doctrine previously laid down in that state, that in such cases damages may be recovered. It is also worthy of note in this regard that the Supreme Court of North Carolina, has one o the strongest supreme benches of the country

the opinions of which are most worthy of confidence and respect. Alabama, Texas and Kentucky are in line with North Carolina, and we predict that this doctrine will become the law generally. Any one who has witnessed the agony of a mother resulting from a delay in a telegram informing her of the serious illness of a child at a long distance from her, would hardly fail to see the wisdom of the policy of the law which regards such suffering as a proper element of damages, for which there should be a recovery. There is good reason why the mental suffering in the case of delayed telegrams, at least, should be compensated in damages separate and apart from the proof of other injuries for which damages might be allowed arising out of the same matter.

NOTES OF IMPORTANT DECISIONS.

BILL OF EXCEPTIONS—POWER OF JUDGE TO SIGN AFTER EXPIRATION OF TERM OF OFFICE.—It has always been a question open to considerable controversy whether a trial judge who sat and heard a cause can sign a bill of exception in such cause after the expiration of his term of office. There are reasons in favor of both sides of this interesting question. It would seem that those who contended that to permit a judge to sign a bill of exceptions after the expiration of his term of office is clearly a breach of the constitutional provision obtaining in most states, prescribing the limits of judicial terms are strictly and technically logical in their contention. It would seem that to permit a judge to sign a bill of exceptions after his term as a judge has expired in effect prolongs his term of office for the purpose, at least of that act, and if the courts or the legislature can prolong a judge's tenure of office for one purpose, it would seem naturally to follow that they could prolong it for all purposes. There is thus an ultimate danger in making an exception to the rule that the duties and powers of a judge cease with the limitation of the tenure of his office. On the other hand, however, other authorities contend that there are special reasons for making this exception; not the least important of which that the judge who tries a case is the only judge qualified to supervise, correct and sign a bill of exceptions, and that the exigencies of the occasion demand that his judicial powers be prolonged for that purpose. This contention is held to be supported by the better reason in the recent case of Larkin v. Saltair Beach Co., 83 Pac. Rep. 686, where the Supreme Court of Utah held that a statute providing that a judge may settle and sign a bill of exceptions after he ceases to be judge, is not in violation of art. 8, § 5, of the constitution of Utah limiting the term of office of the district judges to four years.

In support of its contention in this case the Supreme Court of Utah offers the following: "Respondent has filed in this court a motion to strike from the files in the case the bill of exceptions. It is claimed that no proper bill of exceptions was ever settled, for the reason that the bill of exceptions was signed and settled on the 2d day of March, 1905, by Hon. Samuel W. Stewart, judge of the district court, before whom said cause was tried, and that on said 2d day of March, 1905, he was no longer judge of said district court, his term of office having expired before that date, and that therefore he was without authority to settle and sign the bill. Section 3290, Rev. St. Utah 1898, among other things, provides that: 'A judge, referee, or judicial officer may settle and sign a bill of exceptions after as well as before he ceases to be such judge, referee, or judicial officer.' But counsel for respondent contend that this provision of the statute is in contravention of section 5, art. 8, Const. Utah, which, so far as material here, provides that: 'The term of office of the district judges shall be four years' and that the effect of the provision of the statute referred to is to extend the judicial functions of a judge of the district court beyond the period of his constitutional term of office. This question has been before the courts of other states, and, while some of the decisions hold that a judge has no power to settle and sign a bill of exceptions after the expiration of his term of office, we think the weight of authority and the better reasoning is in favor of the doctrine which holds that a judge who has tried a case may settle and sign a bill of exceptions after he ceases to hold the office. The reason for the rule is apparent. The bill recites the exceptions taken and is a narrative of what occurred at the trial, and the judge who tries a case and is familiar with all of the proceedings is better able to settle a bill of exceptions and thereby preserve to the parties to the action their substantial rights than would be his successor, who might have no personal knowledge of what occurred at the trial. The constitution of Colorado and that of Wyoming have provisions similar to that of our own state limiting the term of office of district judges to a specified number of years, and the courts of those states have held that a district judge may settle a bill of exceptions after his term of office expires in cases tried before him while holding the office."

The court in the principal case cites the decision of the Supreme Court of Wyoming in the case of Sterling v. Wagner, 4 Wyo. 5, 31 Pac. Rep. 1032, 32 Pac. Rep. 1128. This is a very well considered case indeed, in which the authorities are reviewed at length. In the course of the opinion in that case the court, speaking through Chief Justice Groesbeck, observes: "The bill merely recites what occurred at the

trial which is not of record, and is a mere narrative or a historical account of those events. In some states, by consent of the parties, the clerk of the court may sign the bill, in others, where the judge is dead or disabled, two attorneys may allow and sign, while in others, in case of grave disputes, the bill may be settled by the testimony of bystanders or members of the bar. * * * When allowing a bill, the court does not pronounce a judgment; it merely states that the exceptions taken in the bill actually occurred during the progress of the trial." The Supreme Court of Colorado, in the case of Water Supply Co. v. Tenney (Colo. Sup.), 40 Pac. Rep. 442, after referring to the conflict of authorities on this question and citing a number of decisions from the states which have adopted and adhere to the contrary rule, cite, with approval, the case of Stirling v. Wagner, *supra*, as well as decisions from other states which uphold and declare the same doctrine therein announced, say: "We think those authorities which recognize the power of the judge to settle a bill after he ceases to hold the office are grounded upon the better reason, and that the rule is more consonant with the liberal spirit of the code in observing the substantial rights of the parties to an action and disregarding technicalities. It saves expense to litigants, and avoids waste of time, yet preserves to the parties their substantial rights equally as well as does either of the methods."

THE LEGAL STATUS OF THE INDIANS IN THE UNITED STATES.

The Indian problem has been one of the most important questions with which our government has had to deal. In fact the presence of the Indians, a dilatory, savage, and nomadic race, in a country like ours, founded on the idea of the equality of men, has always been a serious matter. When Sir Walter Raleigh's expedition landed in Virginia in the year 1584 he took possession, in the name of England, of all the land between the boundaries of what was then occupied by the Spanish on the south and the French on the north, and as far westward as future exploration should show the land to extend. Thus we see the beginning of that steady advance upon the property of the native American, which was to last for over three centuries and was to cease only upon the complete subjugation and reduction to complete dependence of those, who were once the proud possessors of the soil. The manner in which this subjugation is being brought about is a novel one to the annals of history. For a time after our forefathers landed in America it was comparatively easy to ward off or pos[illegible] crude and simple process of removing the Indian tribes west, and eventually beyond the Mississippi, to regions remote from our civilization and the presence of the white man. This, however, soon ceased to be a resource upon which we could rely. The vast spaces of the west were rapidly filled up with our civilization, and there were few remote regions to which the Indians could [illegible] reservations the white men were crowding upon, surrounding and coveting. The Indians then must live among us, and must be considered a permanent element of our society; and hence the Indian problem must be solved, not by separating the Indians from us, but by educating them and establishing by wise and just legislation an order of things under which they and we might live together in peace and prosperity. Our ancestors who came to this country, as the stronger race, could have done with the Indians just what they pleased; for there is no limit to what a sovereign nation can do, except what is imposed by the superior physical force of some other nation. The Indians themselves were powerless to resist us; and Europe showed no disposition to interfere on their behalf. Accordingly we could have exterminated the Indian tribes; driven them out of the country; conquered them and governed them as subject nations; we could have broken up their tribal organizations and subjected the individual members thereof to our laws; or we could have made them citizens, incorporating them as members of the Union. As a matter of fact we did none of these things; we professed to act more fairly. Although asserting title to the fee of the soil, our government conceded to the Indian tribes the right to possession; and although denying to them the right to enter into any agreements with foreign countries, or to be recognized in any way by them as nations, we recognized them as nations, or, more precisely, we recognized them as distinct political communities, having the right to govern themselves and manage their own internal affairs, and as, in general, beyond our jurisdiction, legislative and judicial. Thus matters have drifted along, with slight changes as occasion demanded for more than three centuries. The Indians

were recognized by our government in its dealings with them as distinct political communities, and our sovereign power entered into treaties with them up to and for many years after the founding of the constitution. In fact treaties were made with the Indian tribes down to the year 1871 by our executive (when an act was passed by congress prohibiting further treaties being made with the Indian tribes) and they were treated as a people governed solely and exclusively by their own laws, usages, and customs within their own territory, claiming and exercising exclusive dominion over the same, yielding up from time to time portions of their land, but still claiming absolute sovereignty and self-government over what remained in their possession. They are still allowed to govern their own internal affairs, and to exercise judicial powers over matters arising under their original jurisdiction while they continue their tribal relation; and they are permitted to retain their own laws and customs in all matters pertaining to their contracts, and the manner of their enforcement, marriage, descents, and the punishment of crimes committed against each other. They are excused from all allegiance to the municipal laws of the whites and are subject to only such restraints as have, from time to time, been deemed necessary for their own protection and for the protection of the whites adjacent to them. The exact legal status of an Indian tribe to our government was firmly established in the year 1831, when the Cherokee Indian nation, which tribe had occupied from time immemorial, a territory now incorporated in the state of Georgia, sought to maintain a bill in the United States court to restrain the state of Georgia from the execution of certain laws of that state, which, it was alleged, would go directly to annihilate the Cherokee Indian tribe as a political society, and to seize for the use of Georgia, the lands of the nation which had been secured to them by the United States in solemn treaties repeatedly made and still in force. Counsel for the plaintiff in that case maintained that the Cherokee nation was a "foreign state" and entitled to sue in the United States court under the clause in the constitution of the United States, which in the second section of the third article, closes by enumerating the cases to which it is extended with "controversies between a state or the citizens thereof and foreign states, citizens, or subjects." The vitalness of the question was readily recognized and the case was ably and exhaustively discussed by the justices of the Supreme Court of the United States with our greatest jurist, John Marshall, in the chief justice's chair; and it was decided in that case, that even though the United States had recognized the Indians as a people capable of governing themselves and had made many treaties with them, yet an Indian tribe was not a "foreign state" within the meaning of the second section of the third article of the constitution; that although the Indians had been regarded as possessing the attributes of nationality in many respects, they were not considered as "foreign," but as "domestic dependent nations," or as "wards of the nation" and as such were entitled to the care and protection due from a guardian to his ward. That the court realized the importance of the matter and considered seriously the effect their decision would have upon the Indian tribes within the limits of the United States may be readily recognized from the following quotation from the elaborate and lucid opinion of Chief Justice Marshall in the case above referred to, wherein he says that "if courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts, and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their extensive territory than is deemed necessary to their comfortable subsistence."

While the Indians have been treated by us as dependent nations, yet it is true that our sovereign power never, by conquest, reduced the Indians to the condition of subjects, or they would have lost their separate national existence, and the rights of self-government, and have become subject to the laws of their conquerors. When wars took place they were followed by regular treaties of peace, containing stipulations on both sides according to existing circumstances; the Indian

nation always preserving its distinct and separate national character. While a subjected people, therefore, it would seem that practically the only restrictions of importance placed upon them by our sovereign power, was in regard to the land which they were permitted to occupy, *i. e.* they were not at liberty to sell or enter into any agreements or treaties with foreign nations affecting their territory. It is obvious that if this government had forced the Indians into absolute submission at an early date and compelled them to abandon their tribal relations and adopt the habits and customs of the white Americans, the task of making them good and valuable citizens would have been much easier and could have been accomplished within a great deal shorter period of time, to say nothing about the continued great expense. But the Indians were of a different temperament to the Americans, having no ambition except to hunt and roam through the forests, and the Americans felt that they should have some consideration for the Indian's inclinations inasmuch as they were here first, and hence they allowed them many rights and privileges which have since proved troublesome and costly to our government.

Indian Citizenship. — The Indians have been treated practically as foreigners so far as the question of citizenship is concerned. A concise statement of their situation in this regard was made by our supreme court in 1884, when an Indian by the name of Elk brought suit against the registrar of one of the wards in the city of Omaha for refusing to register him as a qualified voter. Elk alleged that more than a year previous to the filing of his action he had severed his tribal relation to the Indian tribe of which he had been a member and had fully and completely surrendered himself to the jurisdiction of the United States and still continued to be subject to the laws of the United States; and averred that under and by virtue of the fourteenth amendment to the constitution of the United States, he was a citizen of and entitled to the rights and privileges of a citizen of the United States. Our supreme court in deciding this case, however, held that Indians born within the territorial limits of the United States, members of, and owing immediate allegiance to, one of the Indian tribes (an alien, though dependent, power), although in a geographical sense born in the United States are no more "born in the United States and subject to the jurisdiction thereof," within the meaning of the first section of the fourteenth amendment to the constitution of the United States, than the children of subjects of any foreign government born within the domain of that government, or the children born within the United States, of ambassadors or other public ministers of foreign nations. The view taken by the court in this case was principally based upon the second section of the fourteenth amendment of the constitution of the United States, which provides that "representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed." Inasmuch as it was not alleged by Elk that he was a tax payer he could not be considered a citizen under this clause of the constitution and could not maintain a suit in the United States court. If, however, it had been alleged that Elk was a tax payer we are convinced that the court would in that case have held that he was not a citizen of the United States for the reason that it is clearly provided in the constitution that "no person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of the president;" and "the congress shall have power to establish an uniform rule of naturalization." The fourteenth amendment of the constitution was enacted to settle the question, upon which there had been a difference of opinion throughout the country, as to the citizenship of free negroes; and to put it beyond doubt that all persons, white or black, and whether formerly slaves or not, born or naturalized in the United States, and owing no allegiance to any alien power, should be citizens of the United States and of the state in which they reside. These clauses of the constitution contemplate two sources of citizenship, and two sources only: birth and naturalization. The persons declared to be citizens in the fourteenth amendment are "all persons born or naturalized in the United States and subject to the jurisdiction thereof." The evident meaning of these words is, not merely subject in some respect or degree to the jurisdiction of the United States, but com-

pletely subject to their political jurisdiction, and owing them direct and immediate allegiance. And the words relate to the time of birth in the one case, as they do to the time of naturalization in the other. Persons not thus subject to the jurisdiction of the United States at the time of birth cannot become so afterwards, except by being naturalized, either individually, as by proceedings under the naturalization acts, or collectively, as by force of treaty by which foreign territory is acquired. Chief Justice Taney in his opinion in the famous case of Scott v. Sanford said in this connection that "they" (the Indian tribes) "may, without doubt, like the subjects of any foreign government, be naturalized by the authority of congress, and become citizens of a state, and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people." But an emigrant from any foreign state cannot become a citizen of the United States without a formal renunciation of his old allegiance, and an acceptance of such party as a citizen by the United States. In the case above referred to Elk had not applied to, and been accepted by, the United States as a citizen, and therefore under the provisions of the constitution he had no right to claim citizenship. On first thought it would seem absolutely inconsistent with our idea of a well organized and democratic government, that this people, who had always resided in our territory, native born Americans, and subject to the control of our government, should not be members of that privileged state which we call citizenship. But considering the ways, habits, uncivilized ideas and general condition of this people, we can readily see that, without preparation and civilization, they could not from their very nature conform to our advanced theories of a centralized government; a stage that can only be reached by every individual comporting himself to laws and regulations made for the betterment of the whole, subjecting himself to restrictions, and conditions: giving up certain rights and privileges for the general welfare of the community; all of which are positively necessary in order to provide most fully security to every individual; to maintain a stable government and establish amicable relations with neighboring powers. The fact that Indians born and raised within the limits of the United States have not been considered citizens by our sovereign power, and could not become citizens without the co-operation of the government has been no serious impediment to their coming into this privileged state, however, as the regulations governing naturalization are, and always have been, very simple and easily complied with. And indeed we think it clear that our government has always been especially desirous of having the Indians become citizens of the United States as soon as they are capable of enjoying citizenship, and this was doubtless the intention of our forefathers from the very beginning. In many cases they have received special consideration and acts have been passed by congress securing citizenship to them in large numbers; for instance, in 1887 a statute was enacted by congress for the benefit of the Confederated Peoria Indians residing in the Quapaw Indian agency, which provided that Indians residing on lands allotted to them in severalty should be considered citizens of the United States without the formality of naturalization, and this statute secured citizenship to in the neighborhood of ten thousand Indians. Thus we see that the condition of the Indian tribes in the United States is one of the most peculiar of any nation or community in the world. For the last three centuries they have been a subjected people, residing among a civilized race having superior intellectual powers, with substantially no rights other than those which they derive from the congress of our government, and the additional privilege of becoming citizens of the United States and taking part in this government, as soon as the sovereign power deemed them capable of such responsibilities. To fit them for such duties has been the special aim of our people. As a weaker race the Indians have naturally depended upon us to a certain extent, and looked to our government for assistance and protection. And on the other hand we, as the stronger race could exercise such control over them as we saw fit. Hence we have, from time to time, passed statutes regulating Indian affairs, and to protect them, whether on or off an Indian reservation. An examination of the statutes enacted by congress in

this connection will readily convince one that that body has been very considerate of the Indians and their welfare. The degree of care taken by this body on their behalf may be noticed particularly by a reference to some of the statutes relating to the Indian territory, which is the largest single district of Indian country in the United States. That part of the United States now known as the Indian territory, together with other extensive territory, since appropriated for and incorporated in other states and territories, was set apart by the United States in 1834 for the Indian tribes which were removed at that time from their original homes; and was at first occupied exclusively by the "five civilized nations;" namely, the Cherokees, Chickasaws, Choctaws, Creeks and Seminoles, and the tribes incorporated into these nations. From the time these tribes were removed to their new territory much aid was rendered them by our sovereign power, and they have long since become sufficiently well educated in the habits of civil government to establish and maintain a well-organized constitutional government, secured to them by treaties and acts of congress. In the early part of last century a superintendent of Indian affairs was appointed with headquarters at St. Louis, and it was his duty to look after the Indians generally. Later this duty fell to our Secretary of the Interior, who is assisted by a commissioner of Indian affairs and many other subordinate officers, all of whom are efficient men and are rendering valuable services in making the Indians self-supporting. In recent years it has been the custom to grant an Indian tribe a certain scope or tract of land to be occupied by them, and these reservations are under agents appointed by the Secretary of the Interior. When a tribe has arrived at a certain degree of civilization, or when they have asked it and their condition is such as to warrant it, the land of the tribe is divided into portions or allotments and given over to the individuals to be held by them in severalty. Generally by agreement in such cases, where the allottees are eligible, they are taken as citizens of the United States. In making these allotments and granting the land in severalty, the government first satisfies itself of the feasibility of the move, taking into consideration the general condition of he Indians; their advance towards civilization; whether or not they are industrious and capable of holding their land in severalty, and, also, as to whether they are capable of realizing and performing their duties as citizens of the commonwealth. Handsome appropriations have been made from time to time by congress to defray such expenses as were incurred by our officials for the betterment of the Indians. Part of the work of these officials has been to establish schools and to secure a proper number of proficient instructors to teach the Indians reading, writing, and arithmetic, and also to secure experienced farmers to instruct them in the science of farming, where they were desirous of making their own living. Training schools have been established also, where the Indians are taught many trades and professions. Supplies are furnished the children to enable them to attend school, and all proper protection to prevent their being imposed upon has been furnished by our government. Statutes have been enacted to prevent the white man from trading with the Indians, except where the contracts are approved by one of the United States officials in charge of Indian affairs. It was readily recognized by congress that the average white American, with his natural aptitude in business affairs, was much too shrewd to deal with the red man on an equal basis, and it was not slow to provide proper protection.

Some writers are inclined to think that our treatment of the Indians within the limits of the United States has been far from what it should have been and will go down in history as a blot on our national honor, but this we are unwilling to concede. They were, of course, here when the white Americans came to this country, and have been treated as subjects with the privilege of becoming citizens only when our sovereign power sanctioned such action, but what other treatment would have served—they are a people within the geographical limits of the United States—the soil and the people within these limits are under the political control of the government of the United States, or of the states of the Union. There exist within the broad domain of sovereignty but these two. There may be cities, counties, and other organized bodies with limited legislative functions, but they are all derived from, or exist in subordination to, one or the other of these. The territorial

governments owe all their liberties to the statutes of the United States conferring on them the powers which they exercise, and which are likely to be withdrawn, modified, or repealed at any time by congress. Such has always been the case with the Indian tribes; they have occupied certain territory within the limits of the United States only through the goodness of the government of the United States, and have been allowed to continue their tribal relations on reservations within the limits of a state or of the United States, under the protection and control of our government, not because our government was obliged to recognize and protect them, but through pity and for the sake of humanity. It certainly is better for all concerned that we civilize this people by educating and making them citizens, than to set apart a vast territory as a hunting ground for them merely in order to gratify a whim, as some have suggested, which could in no material way be beneficial to our government or to the civilized world in general. Possibly some mistakes have been made in trying to rear this people, but to err is an inherent characteristic of human nature. We believe that no subjected people in the history of the world has been treated more fairly, and while the Indians have been slow to adopt the habits and customs of the white Americans, yet, without doubt, before the end of the present century practically all of the Indians in the United States will be good citizens and staunch supporters of the constitution.

There seems to be a general idea that the Indians in America are rapidly diminishing in number, and that they will soon be practically extinct. We think it proper, therefore, in closing this article to state that this is an erroneous idea. At the time our ancestors came to America it was estimated that the Indian population in this country aggregated between two and three hundred thousand. Of course this is only an approximate estimate, as no correct census was obtained for many years after the discovery of America, and there may have been many more than was estimated, or there may possibly have been a few less. In 1880 we find a correct census of the Indians in the United States and British Columbia was obtained, showing 303,248 Indians in the United States and Territories, and 103,969 Indians in British Columbia, or a total of 407,217 Indians in North America, excluding Mexico. In 1900 the census showed something less than 400,000 Indians north of Mexico, showing a slight decrease in the Indian population during the last twenty years.

From these figures it will be noted that the Indians in the United States are not diminishing as rapidly as might be expected, if at all. It should be understood, however, that many of the Indians included in these figures are not full blood Indians, but are mixed with negro and white blood.

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NEGLIGENCE—CARE REQUIRED AT BATHING RESORTS.

LARKIN v. SALTAIR BEACH CO.

Supreme Court of Utah, December 26, 1905.

Where defendant maintained a public bathing resort on a lake, to which persons were invited to bathe for an admission fee charged, defendant was bound, in the exercise of ordinary care, to keep some one on duty to supervise bathers and to immediately rescue any apparently in danger, and to make prompt and reasonable efforts to recover any of such patrons on being informed that they were missing or in danger.

Where defendant maintained a bathing resort to which the public was invited for an admission fee, but took no steps to mark safety limits or to provide for the rescue of bathers, and, on being notified that intestate was in danger of drowning and was missing, sent no one in search or to his relief until several hours had elapsed, defendant was guilty of such negligence as warranted a recovery for decedent's death.

This action was brought by plaintiff, Anna M. Larkin, to recover damages for the death of her son, Roy E. Larkin, alleged to have been drowned in the waters of Great Salt Lake at the bathing resort of the defendant. The negligence complained of is that the defendant failed to provide suitable guards or life lines, or to establish or erect notices indicating the depth of the water in and about said beach, or to provide suitable and proper persons to superintend bathing in said waters, or to provide persons or appliances to rescue bathers from drowning when in danger, or to provide a person or persons and to have such person or persons present on behalf of said defendant to search for and recover any of its bathers, bathing in said waters, when in danger and that in consequence thereof the said Roy E. Larkin was drowned while bathing in said waters. The defendant answered, denying the allegations of the plaintiff's complaint charging

negligence, and alleged contributory negligence on the part of Roy E. Larkin.

McCARTY, J.: At the conclusion of the evidence the defendant requested the court to instruct the jury to return a verdict in its favor. The refusal of the court to give this instruction is assigned as error. It is urged on behalf of appellant that it does not appear from the record that the death of Roy E. Larkin was due to any negligent act or omission of defendant. The undisputed evidence in this case shows that the bathing season at this resort is limited to about three months in each year and that during the year (1903), when Larkin was drowned 50,000 of the patrons of this resort went in bathing, and it is admitted that there were no notices placed in the lake indicating the depth of the water, nor signs of any kind to advise the bathers of the limits of the resort within which they could bathe with safety; neither did it keep at the resort a person with the necessary appliances to rescue bathers from drowning when in danger. In fact, the only supervision exercised by defendant over its patrons who bathed in its resort, as shown by the evidence of its general manager, J. E. Langford, was to invite and carry them out on the raft to "deep water." From that time on the bathers were left to shift for themselves, and, as stated, no means of rescue was provided by defendant, in case any of them, through lack of information, inadvertence, or otherwise, got into water beyond their depth, or a storm arose, or their situation was otherwise rendered perilous. And there is abundant evidence in the record which tends to show that an agent of the company had notice an hour or more before sunset of the peril that deceased and his companion, Ross Wells, were in, and that no effort was made by defendant to rescue the boys until about 9 o'clock that night. It is well settled that the owners of resorts to which people generally are expressly or by implication invited to come are legally bound to exercise ordinary care and prudence in the maintenance and management of such resorts to the end of making them reasonably safe for the visitors. And when the business is that of keeping or carrying on a bathing resort, the authorities hold that the proprietors or owners thereof are not only required to exercise that same degree of care and prudence with respect to keeping the premises in a reasonably safe condition, which the law imposes upon keepers of public resorts generally for the protection of their patrons, but the law imposes upon them the additional duty, when the character and conditions of the resort are such that because of deep water or the arising of sudden storms, or other causes, the bathers may get into danger, of having in attendance some suitable person with the necessary appliances to effect rescues, and save those who may meet with accident. Not only is it the duty of the owners of bathing resorts to be prepared to rescue those who may get into danger while in bathing, but it is their duty to act with promptness, and make every reasonable effort to search for, and, if possible, recover those who are known to be missing. In the case of Brotherton v. Manhattan Beach Imp. Co., 50 Neb. 214, 69 N. W. Rep. 757, the decedent, with a companion, was bathing in defendant's resort The companion started to come in and discovered that Brotherton, decedent, was still in the water; thereupon he went back and looked for him among the bathers, but did not find him. He then went and notified the employees of defendant company of Brotherton's absence. No effort was made to recover Brotherton, and he was drowned. In the course of the opinion the court said: "We think it is a reasonable inference that persons of ordinary prudence, conducting a bathing resort frequented by 10,000 people a month, should, in the exercise of ordinary care, keep some one on duty to supervise bathers and rescue any apparently in danger; and, if not, that certainly it is a reasonable inference that persons so situated should, on ascertaining that a person last seen in the water is missing—without a moment delay—exert every effort to search for that person in the water, and not merely advise a youthful companion of the missing person to search on the land, and coolly watch the result of such search. We think, in this aspect of the case, and in this only, the evidence presented an issue which should have been submitted to the jury, and for that reason the peremptory instruction was erroneous." In Dinnihan v. Lake Ontario Beach Co., 8 App. Div. 509, 40 N. Y. Supp. 764, the decedent held a ticket entitling her to bathe in the waters of the lake adjacent to the beach. She was drowned in a deep pool near to a toboggan slide, constructed by defendant in the water. The court in that case held, that "the learned trial judge correctly instructed the jury that the defendant was bound to be active and exercise vigilance to keep the ground, whereon it invited its patrons to bathe, from becoming dangerous, that this duty was an active one, and that the defendant could not escape liability by showing simply that it did nothing to produce the hole. These instructions laid down the rule of law applicable to the liabilities of keepers of bathing beaches." 21 A. & E. Enc. Law (2d Ed.), 471, 472; Thompson, Com. Law Neg. §§ 994, 998; Cooley on Torts, § 606; Boyce v. U. P. Ry. Co., 8 Utah, 353, 31 Pac. Rep. 450, 18 L. R. A. 509; Hart v. Washington Park Club, 157 Ill. 9, 41 N. E. Rep. 620, 29 L. R. A. 492, 48 Am. St. Rep. 298; Richmond, etc., Ry. Co. v. Moore, 94 Va. 493, 27 S. E. Rep. 70, 37 L. R. A. 258; Thompson v. Street Ry. Co., 170 Mass. 577, 49 N. E. Rep. 913, 40 L. R. A. 345, 64 Am. St. Rep. 323; Sebeck v. Platdeutsche Volksfest Verein, 64 N. J. Law, 624, 46 Atl. Rep. 631, 50 L. R. A. 199, 81 Am. St. Rep. 512; Conradt v. Clauve, 93 Ind. 476, 47 Am. Rep. 388; Peckett v. Bergen Beach Co. (Sup.), 60 N. Y. Supp. 966; Breezee v. Powers, 80 Mich. 172 45 N. W. Rep. 130. Dunn v. Brown County Agr Soc., 46 Ohio St. 93, 18 N. E. Rep. 496, 1 L. R. A 754, 15 Am. St. Rep. 556; Francis v. Cockrell, 5

Law Rep. Q. B. 184. Applying the foregoing principles of law to the facts in this case, we are not warranted in holding, as a matter of law, that the defendant was free from negligence. Neither are we prepared to say that the death of decedent was due to his own negligence. There is abundant evidence in the record to support a finding that when decedent and his companions first discovered they were in water beyond their depth, and the storm had overtaken them, they were about 185 feet from the float stand, and were entirely within the radius of territory in which the patrons of the resort usually bathed. Miss Pomeroy testified that, when she started to return to the pavilion to notify the people of the danger the boys were in, they were about 180 feet northwest of the float stand. F. A. Olson, a witness for the plaintiff, testified that he bathed in this resort quite frequently during the bathing season of 1903; that he walked and bathed around the float stand, and that about 75 yards to the north, and the same distance to the west and northwest of this stand, he could not touch bottom; that the water at these points was over a person's head. J. E. Langford, the then general manager of the resort, who was called as a witness by defendant, testified that to his personal knowledge, the people, invitees of defendant company, bathed from 200 to 300 feet to the north and northeast from that point. He further stated, quoting his own language: "Some of them (referring to the bathers) bathed 1,000 feet west; some of them north and northeast. The company knew they were bathing there, and knew the depth of the water. * * * Three hundred feet from the pully frame west and northwest the depth of the water was 5 1-2 feet, possibly 6." It is therefore conclusively shown that a point 185 feet in any direction from the float stand would be entirely within the territory of the resort where the people, men, women, and children, usually bathed with the knowledge and consent of the defendant company. It cannot be held that decedent was guilty of contributory negligence, so long as he and his companions remained within the territory to which they, and the people generally, were invited to bathe, unless they, with knowledge or notice of the danger, put themselves in a position of peril, which was not shown or attempted to be shown at the trial. The undisputed evidence shows that when decedent and his companions discovered they were in danger they made every effort in their power to return to the pavilion. It is urged by appellant that the condition of the premises, such as the lay and character of the bed of the lake, the depth of the water, etc., as testified to by defendant's witnesses, demonstrated that the deceased and his companions must have been out into the lake far beyond the limits within which the patrons of the resort usually bathed. These, however, were questions of fact for the jury to determine, and the jury having found adversely to the defendant on these, as well as all other issues of fact in the case, the verdict cannot be disturbed, there being ample evidence in the record to support it. There are other errors assigned, but we think they are without merit, and therefore deem it unnecessary to discuss them.

We find no reversible error in the record. The judgment, is therefore affirmed, with costs.

NOTE.—*Duties of Proprietors of Bathing Resorts as to Bathers.*—The principal case, while not deciding anything new, is well considered and a good one upon the questions involved, and contains the full force of authority. The very fact that the youth was drowned in the manner set forth in the statement of facts in the principal case indicated gross negligence on the part of the proprietors of the resort. Go to any of the bathing resorts on the Atlantic coast and witness what the law has effected in the care given the bathers by those responsible for the resorts, and the salutary use of the strong opinions of the courts regarding the obligations of the proprietors will be credited with the wisdom they deserve. This opinion, certainly to our mind, does not mar the rules of evidence in view of the shown gross negligence and careless indifference of consequences on the part of the defendant, after the mother of the unfortunate boy had called attention to his peril to those whose business it was then and there to have left no stone unturned to have made a thorough investigation. Such duty the law demanded and humanity called aloud for. Even had it not been shown to the satisfaction of the jury, that the attention of the proprietor was called to the perilous position of the boys, still, that such a situation as the evidence shows in the leading case, to have existed with regard to them should have existed, was enough to have sustained the conclusion of the jury as to the negligence of the defendant. But that "no attempt was made by the manager of the defendant's resort to rescue Ross Wells and his companion, the deceased, until after dark, although they were repeatedly requested so to do by the plaintiff and the mother of Ross Wells, was gross or willful negligence, which was sufficient to have sustained a verdict for the plaintiff, even had the evidence shown contributory negligence on the part of the deceased.

We predict that the bathing resorts of Utah will be on the alert hereafter to keep a vigilant outlook for those who may be getting into places of danger, and the dangerous spots will be marked and placarded. The law is made for practical uses. The opinion is full in authorities and will bring about practical uses

JETSAM AND FLOTSAM.

CARRIER'S LIABILITY FOR DELAY CAUSED BY STRIKES.

The reasons of policy which underlie the common law rule that a carrier is liable for loss of goods unless caused by act of God or the public enemy do not hold where the action is for delay in delivery. The fear of collusion between the carrier and robbers which led Lord Mansfield to enunciate the doctrine that a carrier is an insurer (Forward v. Pittard, 1 T. R. 27), had no application to delay, and a less strict rule of liability has therefore been applied. Where there is no express stipulation in the contract as to the time of delivery, a carrier is bound to deliver within a reasonable time under the circumstances, and where delay arises, the carrier is excused if it has exercised

due diligence in the matter. Geismer v. Lake Shore, etc., R. R. Co., 102 N. Y. 563; Pittsburg, etc., R. R. Co. v. Hollowell, 65 Ind. 188. It would seem that this rule should apply to delays caused by strikes among its workmen, as it does to delays arising from other causes. In strikes unaccompanied with violence, a distinction must be made. If the strike is caused by a dispute as to wages, the carrier must pay whatever is necessary to retain its old employees or to obtain new ones to fill their places. It is under a public duty to run its trains regularly, and due diligence, therefore, requires it to forward its freight at the earliest possible moment without regard to cost. People v. New York, etc., R. R. Co., 28 Hun (N. Y.), 543. But where it is unable, as in the case of a "sympathetic strike," to fill the places of its recusant employees at any advance in price, it should be excused for delay in the absence of negligence on its part.

A doctrine, however, has gained currency by repetition, though supported by only two decisions (Read v. St. Louis, etc., R. R. Co., 60 Mo. 199; Blackstock v. New York, etc., R. R. Co., 20 N. Y. 48; limited by Geismer v. Lake Shore, etc., R. R. Co., *supra*, one since weakened by a limiting decision), to the effect that a carrier is liable absolutely for a delay which is caused by a strike unaccompanied with violence. These decisions proceed on the ground that the delay is caused by the misconduct of the carrier's agents, for which the former is liable under the doctrine of *respondeat superior*. They assume that a strike is always wrongful, which would negative the proposition that a man may, in the absence of agreement, terminate his employment when he wishes. But whether the strike is wrongful or not, how long can the acts of former employees impose liability upon their former principal? A principal is liable for the acts of its agents done in the usual course of their employment. But an employee by the very act of striking terminates his agency, so that he is no longer able, except under circumstances working an estoppel, to subject his principal to liability. Geismer v. Lake Shore, etc., R. R. Co., *supra*. Consequently, there seems to be no reason for imposing upon the carrier a stricter liability than that which holds him to due diligence in avoiding delay. When violence is present in a strike, however, the courts have worked out a more logical result. As illustrated in a late case in the Texas Court of Civil Appeals, they hold that where a carrier uses all reasonable means to fill the places of striking workmen, and is prevented from forwarding freight only by the violent acts of the strikers, it is not liable for the delay. Sterling v. St. Louis, etc., R. R. Co., 86 S. W. Rep. 655. Since the courts reach this result without adequately distinguishing the cases involving strikes without violence, it seems to constitute a tacit disapproval of the doctrine of those cases.—*Harvard Law Review.*

BOOK REVIEWS.

MAXEY ON INTERNATIONAL LAW.

It has always seemed strange to us that there has never been written and published a treatise on international law for use in the class room. For many years past the most common text, and indeed the best obtainable, from which lectures on International Law were delivered, were the chapters devoted to that subject by the illustrious Chancellor Kent in his great "Commentaries." Finally, however, we have a text-book on this subject which undoubtedly will become very popular with students and college faculties. This new work on International Law is by Edwin Maxey, D. C. L., LL.D., professor of International Law in the University of West Virginia. The author says of his own work that he was led to the writing of it by the conclusion being forced on him that "while there were many excellent treatises on international law, there were none which conformed to the needs of the class-room." The work is exceedingly well written. In clearness of analysis, simplicity of style, conciseness of expression, and forcible, convincing logic, the text is a model. The emphasis is very properly thrown upon peace and neutrality rather than upon war, as is the case with most texts on international law. The questions raised by the recent Russo-Japanese war are discussed with gratifying fullness and in an interesting, convincing way, as indeed are the other unsettled questions of international law which will demand the attention of the international conference which is to meet in the near future.

With the colonial appendages which came to us as a result of our war with Spain, we as a nation have lost our exclusiveness and cannot hope to live any longer as a recluse from world politics. Against our will, it may be, we have nevertheless been thrown into the vortex of European and Asiatic political intrigue and must be thoroughly prepared to hold our own. Our sons will sit as ambassadors and ministers plenipotentiary in the great courts of the world, and will more than ever before have need of that careful training in diplomacy and international law which will fit them for conserving the rights of the American people with a firm hand, while they also maintain the *entente cordiale* with the nation to whom they are accredited. This fact already seems to have found reception among students at our colleges and there is already increased interest in the subject of international law, and this interest, it might be observed, would greatly increase if congress should place our consular service on a merit system. There would then be in this country, as there is in the principal nations of Europe to-day, a new profession opened to our bright young men, many of whom would gladly take advantage of the opportunity and train themselves for service in the consular service of the greatest government on earth. This increased interest in the subject of international law will necessarily result in a largely increased demand for a clear simple text-book on that subject. This fact makes the present an opportune time for the introduction of this able, readable and authoritative work.

Printed in one volume of 797 pages, and published by F. H. Thomas Law Book Co., St. Louis, Mo.

STREET RAILWAY REPORTS, VOL. 3.

The series of reports known as the Street Railway Reports, Annotated, edited by Frank B. Gilbert, of the Albany, N. Y., bar, the third volume of which is before us for review, is still prominently featured by its compendious and very accurate annotations to the most timely, interesting and difficult questions of street railway law which are now so constantly arising. Indeed we doubt if there is any text-book which can give to the active practitioner engaged in suits for or against a railway company a quicker or more satisfactory solution of difficult questions of law relating to street railways as this series of reports. Volume 3 reports in full 380 cases, and the following will give an idea of the live subjects of law which have received most thorough annotation in this volume: "Injury o

Person Riding with Driver," Assignability of Street Railway Franchises;" "Liability of Street Railway Companies in Respect to Pavements;" "Wanton and Willful Negligence of Street Railway Companies;" "Declarations of Employees and Third Persons as to Cause of Street Railway Accidents;" "Injuries to Employees Due to Defects in Cars, Tracks and Appliances;" "Presumption of Negligence Arising from Defective Appliances;" "Passengers Injured by Acts of Fellow Passengers or Third Persons;" "Effect of Violations by Street Railway of Municipal Ordinances."

There seems to be a place for a series of special reports on street railway cases. Hardly any branch of law is more often consulted by the city lawyer, and litigation is increasing every year with the increase of mileage of street railways. We confidently expect to see this set of reports widely circulated and frequently cited.

Printed in one volume of 1010 pages and published by Matthew Bender, Albany, N. Y.

HUMOR OF THE LAW.

The story is told of a United States senator, who once began an address: "As Daniel Webster says in his dictionary."

"It was Noah who wrote the dictionary," whispered a colleague, who sat at the next desk.

"Noah, nothing," replied the speaker, "Noah built the ark."

This shows that the senate is strong in Biblical lore as well as in constitutional law.

It was on this wise. Colonel D. was an old antebellum practitioner, very precise and formal, with much hauteur of manner. The witness was an ignorant cornfield negro.

The Colonel: "Do you know William Betts, *alias* (pronounced by the Colonel al-i-ah) John Betts?"

Witness: "I knows Bill Betts, but I don't know nothing bout his al-i-ah (Witness, *sub voce.*) Dey dun got callin' Bill dat—I knowed dat nigger was gwinter scandalize his-sef."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ADVERSE POSSESSION — Boundary Line. — Where plaintiffs had not actual possession of land to any definite line, had regarded the line as in dispute, and had attempted to buy the tract in controversy, they were not entitled to the same by adverse possession. — Liddle v. Blake, Iowa, 105 N. W. Rep. 649.

2. APPEAL AND ERROR—Admissions by Counsel.—The admissions of counsel for defendant in error in their brief cannot change the record so as to show certain action of the trial court which the record fails to disclose.—Sanchez v. Atchison T. & S. F. Ry. Co., Tex., 90 S. W. Rep 689.

3. APPEAL AND ERROR—Duty to Point Out Errors —It is the duty of appellant to point out the evidence to overthrow the ruling of the trial court on the sufficiency of the evidence to support a finding, and not the duty of the appellate court to look for it in the evidence.—Clark v. Rauer, Cal., 83 Pac. Rep. 291.

4. APPEAL AND ERROR—Facts Not Shown by Record.—In the absence of a statement of facts, it will be presumed, on appeal, that all facts included in the judgment are amply established —Owens v. Owens, Tex., 90 S. W. Rep. 664.

5 APPEAL AND ERROR—Finality of Judgment.—A decree of the court of appeals of the District of Columbia, directing sales on foreclosure to be made in discretion of trustees, held not final for purpose of appeal to the Supreme Court of the United States.—Warner v. Grayson, U. S. S. C., 26 Sup. Ct. Rep. 240.

6. APPEAL AND ERROR—Harmless Error.—The admission of immaterial and incompetent evidence is error without prejudice in trials to the court where the evidence sustains the judgment without consideration of the incompetent evidence.—State v. Harris, N. Dak., 105 N. W. Rep. 621.

7. APPEAL AND ERROR—Presumption as to Proof of Will.—In the absence of an appeal from an order allowing probate of a will, it will be presumed on appeal from an order denying petitioner's right to appointment as executor, that the will was properly proved. — *In re* Acker's Will, N. J., 62 Atl. Rep. 556.

8. APPEAL AND ERROR—Record.—Where it does not appear on appeal what the exception sustained to a plea in bar was, the court will consider any valid exceptions that may have been interposed, and assume in favor of the judgment.—Hummel v. Del Greco, Tex., 90 S. W. Rep. 389.

9. APPEAL AND ERROR — Reformation of Contract.—Where a mutual mistake in the preparation of a transportation contract has been found by the court as a fact, error in submitting such question to the jury was not prejudicial.—Turner v. Wabash R. Co., Mo., 90 S. W. Rep. 391.

10. APPEAL AND ERROR—Theory of the Case —Where a case was tried in the lower court on the theory that plaintiff's allegation as to time was not binding, held that the supreme court should not adopt a different theory and reverse the case.—Arrison v. Supreme Council of Mystic Toilers, Iowa, 105 N. W. Rep. 580.

11. APPEARANCE—Jurisdiction.—A defendant who separately or in conjunction with a motion going only to the jurisdiction of the court over his person invokes the power of the court on the merits appears generally.—Everett v. Wilson, Colo., 83 Pac. Rep. 241.

12. ARBITRATION AND AWARD — Unauthorized Rejection of Deposition.—That a deposition taken in aid of proceedings before arbitrators was mailed to one of the parties instead of to the arbitrators held not to authorize the arbitrators to refuse to consider it. — Roberts Bros. v. Consumers' Can Co., Md., 62 Atl. Rep. 585.

13. BILLS AND NOTES—Pleadings.—In a suit on a note which had been secured by mortgage, held not necessary for plaintiff to have alleged the execution of the note or extinction of the security (Code Civ. Proc. § 487).—Bank of Paso Robles v. Blackburn, Cal., 83 Pac. Rep. 262.

14. CARRIERS—Agreements as to Ticket Limitations.—Defendant carrier held bound by the act of an agent of a connecting line in limiting a through ticket over de-

fendant's road, whether the issuing agent was defendant's general or special agent.—Cherry v. Chicago & A. R. Co., Mo., 90 S. W. Rep. 881.

15. CARRIERS—Duty Toward Passengers.—While carriers of passengers are not insurers of absolute safety, yet they are bound to exercise the highest degree of care which is consistent with the nature of their undertaking.—United Rys. & Electric Co. of Baltimore v. Weir, Md., 62 Atl. Rep. 598.

16. CARRIERS—Liability for Damage on Connecting Carrier.—In an action against connecting carriers for delay and destruction of freight, an instruction that, if the initial carrier received and delivered the freight to its connecting carrier at the end of its route in good order, etc., it was not liable, held improperly refused.—Cincinnati, N. O. & T. P. Ry. Co. v. Stout, Ky., 90 S. W. Rep. 258.

17. CARRIERS—Notice of Arrival to Consignee.—Where the consignee of goods is not present to receive verbal notice of their arrival, a notice sent through the mail is sufficient.—Braunton & Robertson v. Southern Pac. Co., Cal., 88 Pac. Rep. 265.

18. CARRIERS—Wrongful Ejection of Passenger.—A passenger wrongfully ejected from a train may sue on the contract of carriage or in tort at his election.—Delmonte v. Southern Pac. Co., Cal., 88 Pac. Rep. 269.

19. COMMERCE — Taxation Affecting Interstate Commerce.—Tax imposed by Pub. Laws N. C. 1903, ch. 247, as construed by the state courts, on local business of a foreign meat-packing house as to its sales within the state of products already stored there, held not an interference with interstate commerce.—Armour Packing Co. v. Lacy, U. S. S. C., 26 Sup. Ct. Rep. 282.

20. CONSTITUTIONAL LAW — Impairment of Contract Obligations.—Exercise by a state of its right to alter its municipal corporations held ineffectual to impair the obligations of municipal contracts.—Graham v. Folsom, U. S. S. C., 26 Sup. Ct. Rep. 245.

21. CONSTITUTIONAL LAW—Judicial Powers of Tax Assessors.—Const. art. 5, § 21, exempting judges from the imposition of nonjudicial duties, applies only to judges of the supreme court.—Commonwealth v. Collier, Pa., 62 Atl. Rep. 567.

22. CONSTITUTIONAL LAW — State Taxation of Meat Packing Houses.—Equal protection of the laws held not denied a foreign meat packing house by a tax imposed on its local business, under Pub. Laws N. C. 1903, ch. 247.—Armour Packing Co. v. Lacy, U. S. S. C., 26 Sup. Ct. Rep. 282.

23. CONTRACTS—Architect's Services.—An allusion to fees in an architect's letter held not to constitute one of the terms of the contract for his employment, which included an implied provision to pay regular fees.—Fitzhugh v. Mason, Cal., 88 Pac. Rep. 282.

24. CONTRACTS — Separation Agreement. — An agreement by a husband in consideration of the dismissal of a divorce action, instituted by his wife, to pay such wife a certain sum per month in case she should thereafter be unable to live with him, held valid. — Woodruff v. Woodruff, Ky., 90 S. W. Rep. 266.

25. CORPORATIONS — Creditor's Suit.—In a creditor's suit against stockholders of a corporation to recover unpaid stock subscriptions, it was error for the court not to consider and find the value of services rendered by one of the defendants to the corporation and set off the same against his liability.—Turner v. Fidelity Loan Concern, Cal., 88 Pac. Rep. 62.

26. CORPORATIONS—Dividends Paid Out of Capital.—Dividends paid out of the capital of a corporation held recoverable by receiver of the corporation on its insolvency as far as may be necessary for the payment of debts.—Mills v. Hendershot, N. J., 62 Atl. Rep. 542.

27. CORPORATIONS—Right of Trustee to Sue.—A trustee cannot sue in behalf of his corporation unless he has first requested it to sue and it has refused.—State v. U. S. Grant University, Tenn., 90 S. W. Rep. 294.

28. CORPORATIONS—Sale of Entire Stock.—Sale of nearly entire stock in a corporation by its president, with whom it was pooled for that purpose, on the advice of the directors, to the person offering the best terms, and formally ratified by the directors and a majority vote of stockholders, held not in fraud of the rights of the minority stockholders.—Hallenborg v. Cobre Grande Copper Co., U. S. S. C., 26 Sup. Ct. Rep. 286.

29. CORPORATIONS—Title to Undivided Profits.—Accumulated but undivided earnings of corporation held to belong to corporation and not to stockholders.—Bryan v. Sturgis Nat. Bank, Tex., 90 S. W. Rep. 704.

30. CRIMINAL TRIAL—Continuance.—An application for a continuance on the ground of the absence of a witness rests largely in the discretion of the trial court, and will not be interfered with unless it clearly appears that the discretion had been abused.—State v. Sublett, Mo., 90 S. W. Rep. 374.

31. CRIMINAL TRIAL—Instructions as to Corroboration.—If defendant desires any specific instructions on the question of corroboration he must submit such request to the court, and if the court refused it, then take his exception.—State v. Knudtson, Idaho, 88 Pac. Rep. 226.

32. CRIMINAL TRIAL—Instructions.—Under an indictment charging defendant with having committed murder jointly with other parties, an instruction on the subject of a supposed conspiracy held improper.—Taylor v. Commonwealth, Ky., 90 S. W. Rep. 581.

33. CRIMINAL TRIAL—Sufficiency of Verdict.—A general verdict of guilty, under an indictment charging two offenses, punishment for which is the same, held sufficient where not objected to till after separation of the jury.—Cargill v. State, Ark., 90 S. W. Rep. 618.

34. DEATH—Parties Entitled to Bring Suit.—In an action to recover damages for injuries resulting in death, all or any of the parties to whom the right of action belongs may bring suit.—De Garcia v. San Antonio & A. P. Ry. Co., Tex., 90 S. W. Rep. 670.

35. DEEDS—Description of Parties.—The word "administrator," in a deed conveying lands to an administrator and describing him as such, is simply descriptive.—Love v. Love, Kan., 88 Pac. Rep. 201.

36. DEEDS—Presumption of Acceptance.—Presumption of acceptance of deeds arising from their beneficial character held not rebutted by grantee's assurance of their existence until after the grantor's death.—Russell v. May, Ark., 90 S. W. Rep. 617.

37. DIVORCE—Alimony.—Judgments for alimony *pendente lite* fell with the main judgment, though their existence was recited therein; it appearing on appeal that no final judgment for alimony or maintenance was warranted under the facts.—Kessler v. Kessler, Cal., 88 Pac. Rep. 257.

38. DOMICILE—Husband and Wife.—The domicile of a wife held that of her husband, though she owned a separate residence in another state where they resided together a larger part of the time.—*In re* Hartman's Estate, N. J., 62 Atl. Rep. 560.

39. EASEMENTS—Admissibility of Evidence.—In a suit by a purchaser of land to which a road was an appurtenance, for injury to the road, a question asked the purchaser as to his damage held improperly allowed.—Couson v. Wilson, Cal., 88 Pac. Rep. 262.

40. EASEMENTS—Creation by Deed.—Where one maps his land and conveys lots by reference thereto, the question whether he reserves a private easement in the soil of the street depends upon the language of the deed and the circumstances.—Young v. Pennsylvania R. Co., N. J., 62 Atl. Rep. 529.

41. EASEMENTS—Light and Air.—A grantee of property including a party wall containing windows overlooking adjoining property held to acquire an easement of light and air determinable only on the use of the wall by adjoining owner.—Lengyel v. Meyer, N. J., 62 Atl. Rep. 548.

42. EASEMENTS—What Property Subject.—That there was no building on property when a deed of trust was executed conveying the property, with all rights, privileges, and easements, held not to prevent an easement on the adjacent property, made necessary to the use of an apartment house built on the property described,

from passing under the deed.—Warner v. Grayson, U. S. S. C., 26 Sup. Ct. Rep. 240.

43. EJECTMENT—General Isssue.—Where title is alleged generally without deraigning it, the adverse party may attack a deed in the chain of title as a forgery under the general issue.—Chrast v. O'Conor, Wash., 83 Pac. Rep. 288.

44. ELECTIONS—Ballots.—Failure to observe the directory provisions of the election law will not nullify an election, where it shows a fair and honest expression of the elector's will.—Clark v. Hardison, Tex., 90 S. W. Rep. 342.

45. ELECTRICITY—Contract for Supply.—A furnisher of electric current under a five-year contract with a consumer held without any adequate remedy at law for the consumer's breach of the contract by receiving current from another producer.—Beck v. Indianapolis Light & Power Co., Ind., 76 N. E. Rep. 312.

46. EMINENT DOMAIN—Telephone Poles and Wires in Street.—Telephone poles and wires in a street do not constitute an additional burden upon the fee for which abutting owners are entitled to compensation.—Frazier v. East Tennessee Telephone Co., Tenn., 90 S. W. Rep. 620.

47. EMINENT DOMAIN—Value of Property.—In condemnation proceedings, held permissible for jury to estimate value of property at less than the value placed upon it by the opinion of any witness.—Williams v. City of Seattle, Wash., 83 Pac. Rep. 242.

48. EQUITY—Rehearing.—A rehearing in an equity case will not be granted to enable the applicant to impeach the credit of witnesses.—Feinberg v. Feinberg, N. J., 62 Atl. Rep. 562.

49. EVIDENCE—Admissions.—Admissions of one beneficiary in will held not binding on other beneficiary, so that in a will contest admission in evidence of certain affidavit of one of several proponents was reversible error.—King v. Gilson, Mo., 90 S. W. Rep. 367.

50. EVIDENCE—Deed of Married Woman.—A deed by a married woman, duly acknowledged, in which her husband joins, for the purpose of being admitted in evidence, may be proved as at common law.—Lamberida v. Barnum, Tex., 90 S. W. Rep. 698.

51. EVIDENCE—Excessive Damages.—Where a verdict was sustained by the evidence, it was not objectionable as excessive because it exceeded by a small sum the claim of defendant before bringing suit.—Turner v. Wabash R. Co., Mo., 90 S. W. Rep. 391.

52. EVIDENCE—Judicial Notice of Facts.—The county court should not take judicial notice that persons signing protest against granting a liquor license are voters of the neighborhood.—Guinn v. Cumberland County Court, Ky., 90 S. W. Rep. 274.

53. EVIDENCE—Performance of Official Duty.—In action against lunatic it will be presumed that he was present at the inquest at which he was adjudged insane.—Porter v. Eastern Kentucky Asylum for Insane, Ky., 90 S. W. Rep. 263.

54. EVIDENCE—Will Contest.—In a will contest, where a witness testified to conversations between testator and his brother concerning the execution of the will, held proper to permit him to be asked whether there was any act or statement of such brother indicating coercion.—*In re* Nichols, Conn., 62 Atl. Rep. 610.

55. EXECUTORS AND ADMINISTRATORS—Assets.—Where a note is inventoried as an asset of an estate, and is claimed by a third person, his relief is by a bill in equity, and not by a presentation of claim for the note in the probate court.—*In re* Ferdon's Estate, N. J., 62 Atl. Rep. 551.

56. EXECUTORS AND ADMINISTRATORS—Collateral Attack.—On a collateral attack on an order for the sale of real estate by the administrator, that there was other real estate not specifically devised which should have been sold first held not established.—McKenna v. Cosgrove, Wash., 83 Pac. Rep. 240.

57. EXECUTORS AND ADMINISTRATORS—Failure to File Inventory.—Under Gen. St. 1902, § 1, the repeal of section 324, while preventing the institution of new actions for an administrator's failure to file an inventory within 12 months, whether past or future, did not affect pending actions for such delinquencies.—Atwood v. Buckingham, Conn., 62 Atl. Rep. 616.

58. EXECUTORS AND ADMINISTRATORS—Liability on Bond.—Where the sureties on an administrator's bond after due notice of final settlement let the judgment go against the principal and take no part in the proceedings until the period for an appeal has elapsed, the judgment is conclusive as to them.—State v. Goggin, Mo., 90 S. W. Rep. 379.

59. EXECUTORS AND ADMINISTRATORS—Nonresidenc as Affecting Appointment.—That the executor named in a will was a nonsident held no ground for the court's refusal to grant letters to him.—*In re* Acker's Will, N. J., 62 Atl. Rep. 556.

60. EXECUTORS AND ADMINISTRATORS—Statute as to Failure to File Inventory—Act July 6, 1905 (Pub. Acts 1905, p. 413, ch. 217), reducing the penalty in pending actions against administrators under Gen. St. 1902, § 324, held not unconstitutional as impairing vested rights.—Atwood v. Buckingham, Conn., 62 Atl. Rep. 616.

61. EXECUTORS AND ADMINISTRATORS—When Limitations Begin to Run Against Estate.—On the appointment of an administrator who qualified, limitations against the estate in favor of a surety on a note payable to the intestate held to begin to run.—Walker's Admr. v. Turley, Ky., 90 S. W. Rep. 576.

62. FEDERAL COURTS—Interference with State Administration of Criminal Law.—Relief by *habeas corpus* held properly denied by federal court to soldier in custody of state authority to answer charge of homicide committed in discharge of duty, to apprehend deceased for larceny of property from a federal arsenal, where there was conflicting evidence.—United States v. Lewis, U. S. S. C., 26 Sup. Ct. Rep. 229.

63. FIRE INSURANCE—Avoidance of Policy.—Certain transaction between insured and his vendee and the agent of the insurer held to keep the policy in force, notwithstanding a clause avoiding the same on any change in title.—Springfield Fire & Marine Ins. Co. v. Mattingly, Ky., 90 S. W. Rep. 577.

64. FIRE INSURANCE—Effect of Other Insurance.—Insurer in a fire policy held estopped to rely on a provision avoiding the same in case of other insurance and without the original insurer's consent.—Polk v. Western Assur. Co., Mo., 90 S. W. Rep. 397.

65. FIRE INSURANCE—Waiver of Conditions.—Conditions in a written contract embracing a forfeiture as a penalty for breach may not be waived by the declaration or conduct of the party for whose benefit they are made.—Polk v. Western Assur. Co., Mo., 90 S. W. Rep. 397.

66. FISH—Hawaiian Fishery Grants.—Grantees of land under a patent of the king of Hawaii held entitled to a fishery right in the adjoining sea.—Carter v. Territory of Hawaii, U. S. S. C., 26 Sup. Ct. Rep. 248.

67. FRAUDS, STATUTE OF—Joint Promise.—A joint promise by a contractor and the owners of a building to pay for materials furnished, credit being given partly to both, is not within the statute of frauds.—East Baltimore Lumber Co. v. Waldeman, Md., 62 Atl. Rep. 575.

68. FRAUDULENT CONVEYANCES—Insolvency.—On an issue as to the fraudulent character of a transfer of property, proof of the issuance and return unsatisfied of an execution against the seller held *prima facie* proof of his insolvency.—Calkins v. Howard, Cal., 83 Pac. Rep. 280.

69. FRAUDULENT CONVEYANCES—Mortgage.—The loaning of money to an individual, the same being used by him in the business of a corporation, did not render it the lender's debtor, so as to render a mortgage securing the loan valid against creditors.—Mowen v. Nitsch, Md., 62 Atl. Rep. 582.

70. FRAUDULENT CONVEYANCES—Setting Aside Transfers.—A creditor may not maintain a suit in equity to set

aside his debtor's deed until he has exhausted his legal remedies.—State v. Goggin, Mo., 90 S. W. Rep. 379.

71. GUARANTY—Discharge of Guarantor.—The liability of a guarantor of a note under an absolute guaranty of payment held not affected by the neglect of the payee to enforce a chattel mortgage.—Warder, Bushnell & Glessner Co. v. Johnson, Mo., 90 S. W. Rep. 392.

72. HABEAS CORPUS—Findings of Lower Court.—In *habeas corpus* to determine the right to the custody of an infant, the finding of the lower court as to the facts has the effect of a verdict of a jury.—Smiley v. McIntosh, Iowa, 105 N. W. Rep. 577.

73. HABEAS CORPUS—Jurisdiction of Federal Courts.—Federal courts have no jurisdiction to release by *habeas corpus* a person held in custody by state authorities for contempt in refusing to testify before a legislative investigating committee.—Carter v. Caldwell, U. S. S. C., 26 Sup. Ct. Rep. 264.

74. HOMESTEAD—Exemptions as to Proceeds.—The proceeds of a homestead are only exempt for a reasonable time during which they are held for the purpose of reinvesting them in another homestead.—Campbell v. Campbell, Iowa, 105 N. W. Rep. 583.

75. INFANTS—Right to Avoid Contract.—A minor who sold a judgment to his attorney could avoid the sale and recover the amount collected on the judgment.—Vance v. Calhoun, Ark., 90 S. W. Rep. 619.

76. INJUNCTION—Insufficiency of Bill.—Where an injunction is the primary relief demanded, and the bill is not sufficient to sustain the same, it is proper for the court to dismiss the bill on the merits on the hearing of an application to dissolve a preliminary injunction.—Davis v. Baltimore & O. R. Co., Md., 62 Atl. Rep. 572

77. INTOXICATING LIQUORS Illegal Sale.—It is immaterial whether plaintiffs in selling intoxicating liquors had any knowledge for what purpose they were purchased, if they were intended by the purchasers for illegal sale in the state.—Heintz v. LePage, Me., 62 Atl. Rep. 605.

78. INTOXICATING LIQUORS.—Innkeepers.—A keeper of a hotel who has not applied for a license to keep a hotel with the privilege of retailing liquors is not liable to the license tax imposed by Ky. St. 1903, § 4224.—Commonwealth v. Central Hotel, Ky., 90 S. W. Rep. 565.

79. JUDGMENT—Fraud in Procurement.—In order to entitle plaintiff to have a judgment set aside for fraud and collusion between her co-plaintiffs and defendant, defendant's complicity in the fraud must be established.—DeGarcia v. San Antonio & A. P. Ry. Co., Tex., 90 S. W. Rep. 670.

80. JUDGMENT—Matters Which Might Have Been Litigated.—All defenses existing to the contract exemption from state taxes asserted in a suit to enjoin collection of the tax held foreclosed by the decree establishing such exemption.—Gunter v. Atlantic Coast Line R. Co., U. S. S. C., 26 Sup. Ct. Rep. 252.

81. JUSTICE OF THE PEACE—Complaint in Unlawful Detainer.—A complaint in an unlawful detainer proceeding before a justice of the peace held not fatally defective because it was signed in the name of the plaintiff by "T., Agent," instead of by T. "as agent," for such plaintiff.—South St. Joseph Town Co. v. Scott, Mo., 90 S. W. Rep. 727.

82. LANDLORD AND TENANT—Lien For Unaccrued Rent.—Where rent was not yet due, held that the landlord was entitled to restrain the sale of the lessee's property which was subject to lien for rent.—Miller v. Bider, Iowa, 105 N. W. Rep. 594.

83. LIFE INSURANCE—Applications Where Copied From Original.—Where an insurance company or its agents undertake to fill in an application from a previous application or statement made by applicant, it should be held to the strictest adherence to the terms of such application.—Hewey v. Metropolitan Life Ins. Co., Me., 62 Atl. Rep. 600.

84. LIFE INSURANCE—Application When Signed in Blank.—An application for life insurance, signed in blank, by one desiring insurance, and filled in by the company or its agents, should be construed more favorably to the applicant.—Hewey v. Metropolitan Life Ins. Co., Me., 62 Atl. Rep. 600.

85. LIMITATION OF ACTION—Husband and Wife.—The fact that a husband and wife are living apart under such circumstances as to constitute an abandonment of the wife by the husband, which would authorize her to sue for the possession of her real estate, does not impose an obligation on her to sue therefor, and the statute of limitations does not begin to run against her on that account.—Graham v. Ketchum, Mo., 90 S. W. Rep. 350.

86. MALICIOUS PROSECUTION—Probable Cause.—That defendant in an action for malicious prosecution in prosecuting plaintiff for alleged destruction of a highway acted in his official capacity was a matter to be considered in determining the question of probable cause.—Skeffington v. Eylward, Minn., 105 N. W. Rep. 638.

87. MANDAMUS—Grounds.—Where the authorities of a city where threatening to unlawfully appoint a successor of a municipal officer, and to dispossess him of his office and property thereof, his remedy was not mandamus, but injunction.—Callaghan v. McGown, Tex., 90 S. W. Rep. 319.

88. MANDAMUS—Tax Levy to Pay Township Bonds.—County auditors and treasurers may be compelled by mandamus to levy a tax to pay a judgment on township bonds, though the township has been abolished by state constitution, and its corporate agents removed.—Graham v. Folsom, U. S. S. C., 26 Sup. Ct. Rep. 245.

89. MASTER AND SERVANT—Duty of Carrier to Keep Track in Repair.—Violation of a railroad company's duty to keep its track in a reasonably safe condition, or warn its employees, may be charged in general terms.—Illinois Cent. R. Co. v. Leisure's Adm'r, Ky., 90 S. W. Rep. 269.

90. MORTGAGES—Foreclosure Sale.—A sale on foreclosure in entirety of two parcels covered by separate deeds should not be ordered unless the interests of the parties require it.—Warner v. Grayson, U. S. S. C., 26 Sup. Ct. Rep. 240.

91. MUNICIPAL CORPORATIONS—Amendment of Charter.—An adoption by a city existing under a special charter of a part of the general charter *pro tanto* amends the former, and renders it subject to that extent to further amendment by legislative action alone to change the part so adopted.—Hay v. City of Baraboo, Wis., 105 N. W. Rep. 654.

92. MUNICIPAL CORPORATIONS—Authority to Grant Lighting Franchise.—An ordinance granting a franchise to supply gas to a city for 20 years held to grant a franchise which began on the acceptance of the bid, and is valid under const. § 164.—Truesdale v. City of Newport Ky., 90 S. W. Rep. 589.

93. MUNICIPAL CORPORATIONS—Funds Liable for Satisfaction.—A decree against a city held such that it would be satisfied from the general revenue or from a tax to meet the decree, and not from current school revenues.—State v. City of Knoxville, Tenn., 90 S. W. Rep. 289.

94. MUNICIPAL CORPORATIONS—Liability of Abutting Owner.—A city charter making it the duty of owners of premises to keep the abutting sidewalks in repair or pay the expenses of the city in so doing does not make them liable to travelers for injuries occasioned by a lack of repair.—Hay v. City of Baraboo, Wis., 105 N. W. Rep. 654.

95. MUNICIPAL CORPORATIONS—Street Sprinkling.—The work of street sprinkling need not be regulated by ordinance or resolution in order to authorize a municipality to pay therefor.—McAllen v. Hamblin, Iowa, 105 N. W. Rep. 593.

96. MUNICIPAL CORPORATIONS—Waterworks Franchise.—A grant of waterworks franchise held not to devest a municipality of its power to construct an independent waterworks system of its own.—Knoxville Water Co. v City of Knoxville, U. S. S. C., 26 Sup. Ct. Rep. 224.

97. NEGLIGENCE—Contributory Negligence.—Contributory negligence to preclude a recovery must concur with the negligent act or omission of defendant, and

proximately contribute to cause the injury complained of.—St. Louis Southwestern Ry. Co. of Texas v. Parks, Tex., 90 S. W. Rep. 343.

98. NEW TRIAL—Notice of Denial.—A party making a motion for a new trial is bound to take notice of the filing of an order denying the same, and is not entitled to the service of notice thereof by the adverse party.—Bell v. Staacke, Cal., 83 Pac. Rep. 245.

99. PARENT AND CHILD—Emancipation.—The waiver by a parent of right to compensation for a child's services need not be before the services are performed.—McMorrow v. Dowell, Mo., 90 S. W. Rep. 728.

100. PARTNERSHIP — Accounting.—A partner buying out his copartner for the balance shown by an accounting by the other held entitled to have the accounting surcharged for errors through fraud or mistake, though he did not exercise any surveillance.—Ehrmann v. Stitzel, Ky., 90 S. W. Rep. 275.

101. PAYMENT — What Constitutes. — Where one demands money under a claim of right and a threat of litigation and the one of whom the money is demanded has time for deliberation, and the money is then paid, it cannot be recovered back, though the demand is illegal.—Ash v. McLellan, Me., 62 Atl. Rep. 598.

102. PHYSICIANS AND SURGEONS — Practicing Medicine.—One who diagnosed patients' diseases by microscopic examination of a drop of blood, and treated them by subjecting them to rays of electric light, held to have practiced medicine within Act 1901, p. 115, ch. 78.—O'Neil v State, Mo., 90 S. W. Rep. 627.

103. PHYSICIANS AND SURGEONS—Validity of License.—A proceeding on behalf of the state to cancel a license to practice dentistry must be brought by the attorney general, and the state dental board is a necessary party defendant.—Brown v. Grenier, N. H., 62 Atl. Rep. 590.

104. PRINCIPAL AND AGENT—Declarations of Agent.—The admission or claim of one pretending to act as another's agent, and that he has authority to do so, has no tendencies to prove the agency.—McCune v. Badger, Wis., 105 N. W. Rep. 667.

105. PRINCIPAL AND SURETY—Failure to Inform Sureties of Embezzlement.—Failure of directors of a bank to inform sureties on the bond of the bank treasurer of prior embezzlements by him held not to have amounted to fraud releasing the sureties.—Watertown Sav. Bank v. Mattoon, Conn., 62 Atl. Rep. 622.

106. PUBLIC LANDS—Rights of Parties.—Intended concealment from government of trust under which a party perfected the title to scrip land held not to affect the enforcement of the trust, where government officials knew and considered all the facts in relation thereto.—Keely v. Gregg, Mont., 83 Pac. Rep. 222.

107. REFORMATION OF INSTRUMENTS—Mistake.—A written contract having been pleaded in defendant's answer, plaintiff held entitled to pray for a reformation of the contract for mistake in reply.—Turner v. Wabash R. Co., Mo., 90 S. W. Rep. 39.

108. RELEASE—Consideration.—Though a shipper has a cause of action for breach of contract to furnish cars, held he may for a consideration release it by a subsequent contract.—Fountain v. Wabash R. Co., Mo., 90 S. W. Rep. 393.

109. ROBBERY—Assault With Intent to Rob.—One may be convicted of an assault with intent to rob, on a prosecution under the statute imposing a penalty for robbery where the robber is armed with a dangerous weapon, with intent, if resisted, to kill or maim the person robbed.—People v. Powler, Mich., 105 N. W. Rep. 611.

110. SALES—Options.—An option under agreement for transfer of corporate stock held not an option to purchase, but only to return, and if not exercised at time named, the sale is complete, and the promise to pay the purchase price becomes absolute.—Guss v. Nelson, U. S. S. C., 26 Sup. Ct. Rep. 260.

111. SCHOOLS AND SCHOOL DISTRICTS—Bids and Acceptance.—A telegram to a bidder: "You are low bidder. Come on morning train" held not to be an acceptance of his bid.—Cedar Rapids Lumber Co. v. Fisher, Iowa, 105 N. W. Rep. 595.

112. SET-OFF AND COUNTER CLAIM—Master and Servant.—In a suit to eject defendant from complainant's house, a cross complaint to recover the difference between the reasonable value of defendant's services and the amount complainant had paid her held maintainable.—Mixer v. Mixer, Cal., 83 Pac. Rep. 273.

113. STATES—Suits Against.—County treasurer sought to be enjoined from collecting state taxes because of an asserted contract exemption from taxation held endowed with power to submit the rights of the state to judicial determination under the statute under which the taxes were levied.—Gunter v. Atlantic Coast Line R. Co., U. S. S. C., 26 Sup. Ct. Rep. 252.

114. STATUTES — Implied Provisions. — Whenever a power is given or duty imposed by statute, everything necessary to make that power effectual or essential to the performance of the duty is conferred by implication.—Callaghan v. McGown, Tex., 90 S. W. Rep. 319.

115. STREET RAILROADS—Instructions as to Care Required —In an action against a street railway company for injuries to a passenger, an instruction stating that it was the duty of the conductor to exercise great care, without in any way limiting or defining that expression, was erroneous.—Raymond v. Portland R. Co., Me., 62 Atl. Rep. 602.

116. STREET RAILROADS—Instruction as to Proximate Cause.—In an action for injuries to a person, while being driven in a carriage, by a collision with a street car, an instruction held objectionable as misleading the jury on the issue of the proximate cause of the injury.—Hanson v. Manchester St. Ry., N. H., 62 Atl. Rep. 595.

117 SUBROGATION—Crops Raised on Shares.—A third party claimant of cotton levied on by a tenant's execution creditor held not concluded by a judgment in an action by the landlord against such execution creditor to which such claimant was not a party.—Miles v. Dorn, Tex., 90 S. W. Rep. 707.

118. TAXATION—Injunction Against Illegal Taxation.—The rule that tender of valid portion of a tax is a condition precedent to relief by injunction cannot be invoked to defeat relief in aid of a decree enjoining collection of state taxes.—Gunter v. Atlantic Coast Line R. Co., U. S. S. C., 26 Sup. Ct. Rep. 252.

119. TAXATION—Notice as to Sale of Land.—Notices of sale of lands for taxes to the record owners in which the name of the county and state was omitted from the description held ineffective.—Tucker v. Van Winkle, Mich., 105 N. W. Rep. 607.

120. TAXATION—Situs of Personalty.—The situs of a testatrix' personal property for the purpose of assessing a legacy or succession tax is her domicile at the time she died, regardless of the statutes of foreign states also subjecting property of nonresidents therein to similar taxation.—*In re* Hartman's Estate, N. J., 62 Atl. Rep. 560.

121. TELEGRAPHS AND TELEPHONES — Liability to Sender for Failure to Deliver. — A telegram reading: "Your mother is dying. Come at once. [Signed] Callie"—did not, on its face, charge the telegraph company with notice that the sender had any interest in the subject-matter of the message.—Western Union Telegraph Co. v. Bell, Tex., 90 S. W. Rep. 714.

122. TELEGRAPHS AND TELEPHONES—Licenses.—Where a city sold a franchise to a telephone company, held, that it could not afterwards impose a license tax on such company for conducting its business.—Cumberland Telephone Co. v. Hopkins, Ky., 90 S. W. Rep. 594.

123. TRESPASS TO TRY TITLE—Issues and Proof.—In trespass to try title, the defendant, under a plea of not guilty, may prove an outstanding superior title in a third person.—Lamberida v. Barnum, Tex., 90 S. W. Rep. 698.

124. WITNESSES—Cross-Examination to Show Bias.—Where a party seeks to show that an adverse witness should be discredited by ill will, he has the right to show so much of the facts as may be necessary to inform the jury of the cause of improper influence.—State v. Malmberg, N. Dak., 105 N. W. Rep. 614.